

**KENTUCKY DEPARTMENT OF EDUCATION
DIVISION OF FACILITIES MANAGEMENT
AMENDMENT TO
ABBREVIATED STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND ARCHITECT
AIA B151-1997**

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

Add the following sentence: "The Architect shall also comply with 702 KAR 4:160, pertaining to services and actions required of the Architect."

2.2 SCHEMATIC DESIGN PHASE

2.2.4 Add the sentence: "For school Projects on new sites, the Architect shall provide a campus master plan with the Schematic Design Documents."

2.2.5 Add the sentence: "The Architect shall revise the scope of Work to be within the approved BG-1 estimate of Construction Cost, or advise the Owner to submit to the Kentucky Department of Education a revised BG-1 financial page requesting approval of additional financial support."

2.3 DESIGN DEVELOPMENT PHASE

2.3.2 Revise the paragraph to read: "The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost, and of any conflict with the budget established by the BG-1."

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.3 Add the sentence: "The Architect shall advise the Owner of any conflict with the budget established by the BG-1."

2.4.4 Add the sentence: "The Architect shall prepare the appropriate application forms and submit them with the required Construction Documents to the applicable governmental authorities."

2.5 BIDDING OR NEGOTIATION PHASE

Revise the paragraph to read: "The Architect, following the Owner's and the Kentucky Department of Education's approval of the Construction Documents...contracts for construction. The Architect shall be responsible for preparing and placing the Advertisement for Bids in the newspaper having the largest local circulation."

2.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1. Revise the paragraph to read: "The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates after the Architect has performed an inspection prior to expiration of the one-year period for correction of Work from date of Substantial Completion, and has submitted a written inspection report to the Contractor, Owner and the Kentucky Department of Education."

2.6.2 Revise the first sentence to read: "...and in the edition of AIA Document A201, General Conditions of

the Contract for Construction, including amendments thereto, current as of the date of this Agreement, unless otherwise provided in this Agreement."

2.6.5.1 Add the following subparagraph: "The Architect shall keep the Owner informed of the progress and quality of the Work by a written report each month until time of Substantial Completion."

2.6.19 Add the new paragraph: "The Architect shall prepare and deliver to the Owner a set of reproducible record drawings showing significant changes in the Work during construction, based upon the Record Drawings maintained by the Contractor during construction, other data furnished by the Contractor to the Architect, Addenda, Construction Change Directives and Change Orders."

ARTICLE 3 ADDITIONAL SERVICES

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.16 Delete paragraph in its entirety.

3.4.18 Delete paragraph in its entirety.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 Revise the paragraph to read: "The Owner shall provide full information regarding requirements for the Project, including Educational Specifications, interior and exterior space requirements and relationships, flexibility and expandability, special equipment and systems, site requirements, and the Owner's objectives, schedule and constraints."

4.2 Revise the paragraph to read: "The Owner shall establish and periodically update an overall budget for the Project based on consultation with the Architect and the Owner's Fiscal Agent, as applicable, which shall include the Construction Cost, the Owner's other related costs and fees, and reasonable contingencies related to all of these costs."

4.3 Revise the second sentence of the paragraph to read: "The Owner, through Board of Education Order, shall examine and take action in a timely manner regarding documents submitted by the Architect..."

4.4 Revise the second sentence of the paragraph to read: "...shall include, as applicable, delineation of current designated flood plain limits, grades and lines..."

4.5 Revise the paragraph to read: "The Owner shall furnish the services of geotechnical engineers when such services are deemed necessary and requested by the Architect."

4.7 Revise the paragraph to read: "...and reports required by law, government agencies, or the Contract Documents."

4.8 Delete the second sentence of the paragraph.

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 Revise the paragraph to read: "The Construction Cost shall be the total cost, or to the extent the

Project is not completed, the estimated cost recorded on the BG-1 form, to the Owner..."

- 5.1.2 Revise the paragraph to read: "The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by the Contractor, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding. Construction Cost shall not include the Owner's contingency allowance for changes in the Work."

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

- 5.2.2 Delete paragraph in its entirety.
- 5.2.4 Revise the paragraph to read: "If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid by 10% or more, the Architect shall be responsible for the redesign of the project to bring the scope of work within the approved budget amount."
- 5.2.5 Revise the paragraph to read: "...Clause 5.2.4..."

ARTICLE 7 DISPUTE RESOLUTION

7.1 MEDIATION

- 7.1.1 In the first sentence delete the words "arbitration or." In the second sentence delete the words "by arbitration," and substitute therefor the words "by legal or equitable proceedings."
- 7.1.2 Revise the paragraph to read: "The Owner and Architect shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the Mediation Center of Kentucky, 271 West Short Street, Lexington, Kentucky, or any other non-profit mediation council approved by the Kentucky Department of Education, Division of Facilities Management. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order."

7.2 ARBITRATION

Delete Article 7.2 in its entirety.

ARTICLE 8 TERMINATION OR SUSPENSION

- 8.6 Revise the paragraph to read: "In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due."
- 8.7 Delete the entire paragraph.

ARTICLE 9 MISCELLANEOUS PROVISIONS

- 9.1 Revise paragraph to read: "This Agreement shall be governed by the law of the Commonwealth of Kentucky."
- 9.2 Revise paragraph to read: "...and amendments, current as of..."

- 9.11 Add the new paragraphs: "The Architect shall carry professional liability insurance in addition to insurance to protect themselves from claims under Workman's Compensation Acts, for claims for damages because of bodily injury, including death, to their employees, and for other liability normally covered by such insurance and shall furnish evidence of such insurance to the Owner."
- 9.11.1 "During the term of this Agreement, the Architect shall provide evidence of professional liability insurance coverage in the amounts stated in Subparagraph 9.11.2. In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of two years following Substantial Completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing in the State are able to obtain such coverage."
- 9.11.2 "Professional liability coverage shall be provided in the following minimum amounts:
- | | |
|---|--|
| "a. Projects up to \$1,000,000 | \$250,000 per claim and
\$250,000 per annual aggregate. |
| "b. Projects from \$1,000,000 to \$10,000,000 | \$500,000 per claim and
\$500,000 per annual aggregate. |
| "c. Projects in excess of \$10,000,000 | \$1,000,000 per claim and
\$1,000,000 per annual aggregate. |
- "The deductible for these policies shall not exceed 5% of the total limit of liability."
- 9.11.3 "The Architect's Consultants shall carry professional liability coverage during the term of the Agreement as stated in Subparagraph 9.11.1, and shall furnish evidence of such insurance to the Owner. The minimum limit of liability for each of the Architect's Consultants is \$250,000."
- 9.11.4 "The Architect shall carry Commercial General Liability Insurance with limits of \$500,000 per occurrence and \$1,000,000 aggregate. This policy shall be written or endorsed to include the following provisions:
- "a. The Owner shall be named as an additional insured,
 - "b. Waiver of Subrogation,
 - "c. Severability of Interest (Separation of Insureds), and
 - "d. Cross Liability Endorsement."
- 9.11.5 "The Architect shall carry Workmen's Compensation Insurance as required by statute, including Employers Liability, with limits of:
- "a. \$100,000 each accident,
 - "b. \$500,000 disease - policy limit, and
 - "c. \$100,000 disease - each employee."
- 9.11.6 "The Architect shall carry Automobile Liability Insurance, including coverage for hired and leased vehicles, with limits of \$500,000 per occurrence, and Non-Owned Automobile Liability Insurance, including coverage for hired and leased vehicles, with limits of \$500,000 per occurrence."
- 9.11.7 "The above indicated coverages shall be subject to the terms, exclusions and conditions of the policies. The Architect shall provide Certificates of Insurance to the Owner upon execution of the Agreement and prior to commencement of services."
- 9.12 Add the new paragraph: "The Architect and the Architect's Consultants shall provide a notarized non-

collusion affidavit on current Kentucky Department of Education form to the Owner upon execution of the Agreement and prior to commencement of services."

ARTICLE 10 PAYMENTS TO THE ARCHITECT

10.2 REIMBURSABLE EXPENSES

10.2.2 Add the new paragraph: "Prior to incurring Reimbursable Expenses, the Architect shall estimate the cost of the reimbursable items, and obtain the Owner's approval for the expenditures."

10.2.1.6 Revise the clause to read: "Expense of additional insurance coverage or limits requested by the Owner in excess of that required to be carried by the Architect and the Architect's Consultants by the Kentucky Department of Education."

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 Delete paragraph in its entirety.

10.3.2 Delete the first word: "Subsequent".

10.3.3 Add to sentence: "...and as approved by the Kentucky Department of Education."

10.3.4 Revise the subparagraph to read: "...lowest bona fide bid or proposal, or (2) if no such bid or proposal is received, the most recent estimate of Construction Cost as recorded on the BG-3 form approved by the Kentucky Department of Education."

10.3.5 Add the new paragraph: "The Architect shall pay each project Consultant within 10 days after receipt of each payment from the Owner for services rendered. Consultant's fees shall be based on a typical 80% x total fee for work categories paid to the Architect for which the Consultant is responsible. If the Architect's fee is a lump sum, the Consultant shall receive the same proportionate amount. If such payments are not made in a timely manner, the Consultant may make a written request that the Owner issue joint checks for all subsequent payments to the Architect naming the Architect and the Consultant as payees."

10.3.6 Add the new paragraph: "Prior to final payment, the Architect shall provide the Owner a written statement of release from each Consultant stating that all fees up to that point have been paid. (This clause does not apply to Consultants, i.e., Geotechnical Engineers, Surveyors, having direct contracts with the Owner.) The Architect shall be paid his construction phase fee at the same proportionate percentage as the construction's completion with 5% of it being retained until final contract completion as designated by the submission and approval of the BG-4 form by the Owner, to the Kentucky Department of Education."

10.3.7 Add the new paragraph: "Should liquidated damages be assessed and received by the Owner, the Owner shall pay the Architect and Architect's Consultants a pro rata share of proceeds based on total amount received for compensation of continued services beyond the original approved Contract time period."

ARTICLE 11 BASIS OF COMPENSATION

11.1 Delete paragraph in its entirety.

11.2 BASIC COMPENSATION

11.2.2 Revise paragraph to read:

"Schematic Design Phase	15%
"Design Development Phase.....	35%
"Construction Documents Phase (Completed Plans & Specifications)	75%
"Bidding and Negotiation Phase.....	80%
"Construction Phase (Includes Retainage of 10%).....	100%"

11.5 ADDITIONAL PROVISIONS

11.5.1 Delete paragraph in its entirety.

11.5.2 Delete the last sentence: "Amounts unpaid ... of the Architect."

END OF AMENDMENT